



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Section 68.4 of the Commission's Rules)

Governing Hearing Aid Compatible Telephones)

WT Docket No. 01-309

RM 86-58

REPLY OF CINGULAR WIRELESS LLC

Cingular Wireless LLC ("Cingular ") hereby submits this Reply in the captioned proceeding. The Petitions for Reconsideration and supporting Comments make it clear that the *HAC Order*¹ has several deficiencies that should be corrected on reconsideration. Specifically, the Commission should not require HAC handsets for the TDMA air interface, it should apply the *de minimis* rule to each air interface, it should not delegate enforcement authority to the states, and it should not discriminate between large and small wireless carriers. No party opposed the Petitions for Reconsideration on these points.

I. The Commission Should Not Require HAC Handsets for the TDMA Air Interface.

The Rural Telecommunications Group and TDMA Carriers seek reconsideration of the requirement to offer HAC handsets on the TDMA air interface. They note that TDMA carriers are rapidly overbuilding their TDMA networks with other digital air interfaces, and that industry support for the TDMA air interface has evaporated. They question the commercial availability of HAC compliant TDMA handsets when the Commission's order takes effect in two years.²

Sprint and the Rural Cellular Association ("RCA ") support reconsideration of this requirement. Sprint notes that the Commission has previously recognized that TDMA is being

¹ See Section 68.4 of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Report and Order*, FCC 03-168 (Rel. Aug. 14, 2003), summarized 68 Fed. Reg. 54173 (Sept. 16, 2003) ("HAC Order")

² RTG and TDMA Carriers Petition for Reconsideration at 2.

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phased out and it is unlikely that handset vendors will devote the resources necessary to develop HAC compliant handsets for this air interface.³ RCA agrees.⁴

Cingular supports reconsideration of the requirement to offer HAC compliant handsets for the TDMA air interface. Cingular is rapidly overlaying its TDMA networks with the GSM air interface. By mid 2005, Cingular expects to have overlaid 100 percent of its TDMA networks with GSM. As a result, while Cingular will continue to order and sell existing TDMA handset models, no new TDMA handset models or updates to existing models will be available. Cingular will be offering at least two HAC GSM handset models in each market where it continues to operate the TDMA air interface. Customers requiring HAC handsets will have GSM handsets readily available. Requiring carriers to offer two HAC TDMA handset models could have the unintended consequence of forcing carriers to turn down their TDMA networks prematurely, thereby forcing customers to migrate to a new technology. This serves neither the carriers' nor the customers' best interest.

II. The Commission Should Apply the *De Minimis* Rule to Each Air Interface.

Research in Motion Limited ("RIM") and the Cellular Telecommunications & Internet Association ("CTIA") seek clarification and/or reconsideration of the *de minimis* exception. The *HAC Order* generally requires manufacturers to make commercially available to service providers at least two HAC compliant handsets for each air interface in its product line.⁵ The order contains a *de minimis* exception for manufacturers and service providers who offer only a small number of handset models.⁶ RIM notes that it produces nine Blackberry Wireless Handheld models—one each for the iDEN and CDMA air interfaces and seven models for the

³ Sprint Comments at 12

⁴ RCA Comments at 3.

⁵ *HAC Order* at ¶ 65

⁶ *HAC Order* at ¶ 69

GSM/GPRS air interface. Because it produces a total of nine models, the Commission staff has advised RIM that it does not qualify for the *de minimis* exception. This leaves RIM with the unenviable choice of introducing four new HAC Blackberry models—two each for the iDEN and CDMA air interfaces—or withdrawing its existing models for these interfaces.⁷ CTIA joins RIM in seeking to have the *de minimis* exception applied to each air interface.⁸ CTIA notes that applying the *de minimis* exception to the manufacturer's total activity "would have the unintended consequence of denying a valuable wireless service to customers who are deaf, hamper technological innovation and limit competition."⁹

Sprint supports the application of the *de minimis* exception on a "per air interface" basis. Sprint notes that the "public interest is not served when the Commission adopts rules that may result in vendors withdrawing highly useful products from the market—action that could distort competition among service providers using different air interfaces."¹⁰

Cingular supports the petitions for reconsideration of RIM and CTIA on this point. The Commission could not have intended to give a manufacturer such as RIM the unenviable choice of tripling its product line for the iDEN and CDMA air interfaces or withdrawing its existing products from the market. The Commission should grant the petitions for reconsideration and hold that the *de minimis* exception applies on a "per air interface" basis.

III. The Commission Should Not Delegate Enforcement Authority to the States.

Verizon Wireless and CTIA both seek reconsideration of the Commission's decision to expand the wireline HAC complaint process to include wireless carriers. New Section 20.19(g) of the rules authorizes the several states to adopt HAC rules as well as procedures to enforce

⁷ RIM Petition for Reconsideration at 1-2

⁸ CTIA Petition for Reconsideration at 13-14

⁹ CTIA Petition for Reconsideration at 14

¹⁰ Sprint Comments at 12

these rules. Verizon Wireless challenges the lack of notice that such a rule was being considered as well as the inconsistency of the result with the Commission's long-standing policy to ensure a consistent, uniform regulatory framework for CMRS.¹¹ CTIA seeks reconsideration of this rule on the grounds that the Commission has existing, effective procedures to process consumer complaints pursuant to Part 1, Subpart E of the Rules. Subjecting CMRS providers to state regulatory jurisdiction is inconsistent with the Communications Act. It is also inconsistent with the Commission's exclusive jurisdiction over radio frequency interference.¹² T-Mobile USA, Inc. ("T-Mobile ") submitted comments supporting the positions taken by Verizon Wireless and CTIA on this issue.¹³ Sprint notes that the states have no expertise in radio technology. By contrast, the FCC staff has both the expertise in radio matters and access to data in the form of compliance reports to evaluate consumer complaints regarding HAC compliance.¹⁴

Cingular concurs that the Commission should grant reconsideration and process consumer complaints regarding HAC compliance in accordance with Part 1, Subpart E of its Rules. The Commission and its staff have devoted substantial resources to make both the formal and informal complaint processes "consumer friendly. The Commission's staff has both the expertise in radio matters and the data required to evaluate consumer complaints regarding HAC compliance. By contrast, the state commissions have neither the expertise in radio matters nor ready access to the compliance reports that contain the data necessary to evaluate such complaints. The Commission should retain exclusive jurisdiction over complaints against CMRS providers.

IV. The Commission Should Not Discriminate Between Large and Small Carriers.

¹¹ Verizon Wireless Petition for Reconsideration at 6.

¹² CTIA Petition for Reconsideration at 14-17.

¹³ T-Mobile Comments at 7.

¹⁴ Sprint Comments at 9-10

Verizon Wireless seeks reconsideration of the Commission's decision to impose different regulatory requirements on large and small carriers. Verizon Wireless cites a lack of notice that the Commission was considering imposing disparate regulatory requirements depending on carrier size, the lack of any support in the record for the result reached, and an inconsistency with Congress' mandate that market forces rather than regulatory asymmetry guide the CMRS marketplace.¹⁵

Sprint concurs with Verizon Wireless. Sprint reminds that it is the stated policy of the Commission "to ensure that economic forces—not disparate regulatory burdens—shape the development of the CMRS marketplace."¹⁶ Sprint states that while it is a Tier I carrier (a Commission-denomination based on size) ALLTEL is not. Yet, there are numerous markets in which ALLTEL serves more customers than Sprint. Sprint argues that it is not clear why ALLTEL, a larger carrier in these markets, should be able to offer fewer U3-rated models than Sprint in these markets.¹⁷

Cingular supports letting market forces rather than regulatory disparities determine outcomes in the competitive CMRS industry. As Sprint notes, 71 percent of the population can choose among six or more wireless carriers. If each of these carriers offers two U-3 rated models, most consumers will have a choice of at least 12 different models.¹⁸ There is no basis for the Commission to impose more onerous requirements on Tier I wireless providers, thereby potentially distorting competition in the many markets in which Tier I carriers compete directly against Tier II/III carriers. On reconsideration, the Commission should repeal Section 20.19(c)(3) of the HAC Rules.

¹⁵ Verizon Wireless Petition for Reconsideration at 2-6

¹⁶ Sprint Comments at 5, citing *Third CMRS Report and Order*, 9 FCC Rcd 7988, 7994 para. 4, 8003 para. 24 (1993).

¹⁷ Sprint Comments at 5-6

¹⁸ Sprint Comments at 6.

V. Conclusion.

The Petitions for Reconsideration identify several flaws in the Commission's new HAC Rules. On reconsideration, the Commission should eliminate the HAC handset requirement for the TDMA air interface, apply the *de minimis* exception separately to each air interface, utilize the Commission's existing rules to resolve consumer complaints regarding HAC compliance, and eliminate the discriminatory requirements applied to large and small wireless providers.

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CERTIFICATE OF SERVICE

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